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IN THE

Supreme Court of the United States

October Term, 1969
No. 768

THE BOYS MARKETS, INC.,

Petitioner,

vs.

RETAIL CLERK'S UNION, LOCAL 770,

Respondent.

Amicus Curiae Brief of Plumbing-Heating and Piping Employers Council of Southern California, Inc.

I.
Interest of the Amicus Curiae and Preliminary Statement.

Plumbing-Heating and Piping Employers Council of Southern California, Inc. (hereinafter referred to as the "Plumbing Council") is a California non-profit corporation engaged in representing approximately 328 employers in the plumbing industry in the nine southern counties in the State of California. Together these member-employers employ approximately 6,000 employees or an estimated one-half of the plumbers engaged in business in Southern California.

This Brief is filed upon the written consent of the parties and pursuant to Rule 42(2) of the Revised Rules of the Supreme Court of the United States. This *Amicus Curiae* has an interest in this case in that its member-employers, have for many years collectively engaged in multi-employer bargaining and have been and are now parties to collective bargaining agreements that in pertinent respects are the same or similar to the Agreement in the instant action. The Plumbing Council has repeatedly found it necessary to enforce the provisions of these agreements through the injunctive process in numerous State courts in California.

The decision of the Court of Appeals for the Ninth Circuit is of particular and vital importance to the members of the Plumbing Council in that it adversely affects the stability of labor management relations and upsets, contrary to the intention of the parties, the expectation of the parties in entering into existing collective bargaining agreements. The decision of the court below creates a substuntive law which is national in its scope and will, therefore, have a detrimental effect upon the sound and efficient operations of the members of the Plumbing Council and is clearly at odds with the longstanding case law in the State of California (and other states) which has enabled the parties to engage in meaningful collective bargaining and mutual responsibility. The decision of the court below creates an unjustified "no man's land" or "rule of the jungle" which has never been sanctioned or favored either by Congress or by this Court.

It is the intention of your *Amicus* to devote this Brief to the discussion of the second question presented by the Petitioner herein, to wit:

> "Whether the United States District Courts are compelled, after removal of an action from a State court in which an injunction was granted against a labor organization, to dissolve such injunction because of the command of Section 4 of the Norris-LaGuardia Act."

To some extent it will be necessary to make reference and to touch upon the reasons raised by the other questions presented by Petitioner to this Court.

ARGUMENT IN SUPPORT OF REASONS.

I.

The decision of the court below wrongfully but effectively precludes the issuance of State court injunctive relief in breach of contract situations; such a result is anathema to stable labor relations and contrary to the intention of Congress. The District Court below, among other things, denied the union's motion to quash the injunction against the union for breach of its contract with Petitioner issued by the Superior Court of the State of California prior to removal of the cause of the Federal District Court, Central District of California (Pet. Br. App. B). On appeal from this judgment the Court of Appeals for the Ninth Circuit reversed the judgment of the District Court. In so acting the Circuit Court of Appeals has, in effect, established a rule of law in interpreting the relationship between Section 301 of the Labor-Management Relations Act of 1947 and the scope of Section 4 of the Norris-LaGuardia Act which is totally unjustified and has serious implications to labor stability in the State of California and throughout the United States. Moreover, contrary to the assumption of the Court of Appeals, this Court has never held, and certainly not in *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962) nor in *Avco Corp. v. Aero Lodge 735, I.A.M.,* 390 U.S. 557 (1968), that the combination of Section 301 of the Labor-Management Relations Act and Section 4 of the Norris-LaGuardia Act precludes a State court from exercising traditional equity jurisdiction to enjoin strikes by labor organizations in breach of contracts with employers or to require that when injunctions are given by State courts in these situations, a federal dis-

trict court to which the action has been removed, is compelled to dissolve such an injunction. Indeed, this court in *Avco* specifically recognized that it was reserving decisions on such questions (390 U.S. at 561, fn. 4). The instant case squarely presents these very important questions.

Congress, in enacting Section 301, clearly never intended to revoke the power of state courts to enjoin breaches of collective bargining agreements. The legislative history of the enactment of Section 301 not only underscores this fact but clearly shows that Congress was cognizant that many states were exercising the traditional powers of equity to enjoin contract violations and that some states had specifically enacted their own laws to secure union responsibility for breaches of no-strike provisions in their contracts. I Leg. His. of the Labor-Management Relations Act 423-24 (1947). Indeed, one Senate bill (No. 1126) originally contemplated that states would no longer have the power to enjoin contract violations on the premise that states should not act in those areas where the N.L.R.B. has asserted jurisdiction. In the end, however, Congress—with full knowledge that a number of states granted injunctive relief—decided that these situations should be "left to the usual processes of the law." *Ibid.* This court in *Dowd Box Co. v. Courtney,* 388 U.S. 502 (1962) recognized that the legislative history of Section 301 clearly testifies to the fact that Congress intended to permit state courts to exercise all their then present rights to adjudicate disputes between parties in relation to labor agreements and that Congress did not intend to take any jurisdiction away from state courts.

This Court has subsequently recognized not only the need to accommodate Section 301 to state court practices but to continue to permit state courts to exercise their traditional authority in this area unless such jurisdictional action undermines the intent of Congress in enacting Section 301. *Cf. International Union v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966); *C. D. Draucker, Inc. v. International Union of Operating Engineers*, 350 F. 2d 936 (1965), *cert. den.*, 384 U.S. 904 (1966).

In the face of the recognized legislative history how could it reasonably be contended that Section 301 denies state courts the power to grant injunctive relief? And, if federal courts must automatically dissolve state court injunctions when the cases are removed, this would be the effect. It must be emphasized that the Norris-LaGuardia Act, which is clearly addressed solely to the federal judiciary and is limited to prohibiting federal courts from *issuing* injunctions, can only reach the state judiciary (if it can do so at all) indirectly through Section 301. It cannot travel the long journey by its own strength alone.

The decision of the Court of Appeals in the instant case is clearly in conflict with the holding of the Court of Appeals for the Fifth Circuit in *New Orleans Steamship Association v. General Longshore Workers, ILA, Local Union*, 389 F. 2d 369 (5th Cir., 1958), *cert. den.* 393 U.S. 828. In that case an arbitration award directed the unions and their members to desist from work stoppages; these stoppages, however, continued.

The Fifth Circuit held that federal courts had jurisdiction to enforce the award, even though admittedly the "end result is the same" as granting an ordinary injunction. The Court thought the logic of the national arbitration policy required this, "otherwise one of the parties to a collective bargaining agreement containing arbitration and no-strike or work stoppage clauses has a hollow right indeed."

In the present situation, also, an employer has a "hollow right" if he may not secure help from a state court to enjoin that which the union has freely consented to when it entered into the collective bargaining agreement.

There is no difference in law, substance or equity between the instant circumstance and that presented in *New Orleans Steamship Association.* In both, an injunction is issued against a breach of the contract. In the latter the federal court actually issues an injunction against a strike or work stoppage in the guise of enforcing an arbitration award. In the former the injunction has already been granted by the state court. The federal court is required to do nothing; it merely declines to take any action.

Surely, if in the one case, it is said that the Norris-LaGuardia Act does not proscribe the positive action of the federal court, how may it be contended that it prohibits its negative action?

The dissenting opinion in *Sinclair* cited what it terms a leading state decision holding that states remain free

to apply their injunctive remedies against concerted activities in breach of contract, *McCarroll v. L.A. County Dist. Council*, 49 Cal. 2d 45, 315 P. 2d 322 (1957). In that case Justice Traynor speaking for the California Supreme Court, after reviewing *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) stated:

> "State Courts therefore have concurrent jurisdiction with federal courts over actions that can be brought in the federal courts under section 301. It is obvious that in exercising this jurisdiction state courts are no longer free to apply state law, but must apply the federal law of collective bargaining agreements, otherwise the scope of the litigants' rights will depend on the accident of the forum in which the action is brought. . . .
>
> "It can be argued that since federal courts in actions brought under 301 cannot enjoin strikes in breach of a collective bargaining agreement because of the prohibitions of the Norris-LaGuardia Act (citation), state courts enforcing rights created by 301 likewise cannot issue an injunction and give a remedy not available in the federal courts. . . .
>
> "If it is assumed that federal courts cannot enjoin strikes in actions under section 301 save in compliance with the strict requirements of the Norris-LaGuardia Act, state courts enforcing federal rights are not necessarily subject to the same restraint. In the first place it is not entirely clear that Congress can compel a state court to withhold a remedy that would be available if the action arose under a contract law of the state. Congress can compel a state court to enforce a federal right and give a prescribed remedy when it is essential to

the full realization of the right, and the state court would be competent under its own law to give a remedy of like character for a right based on state law. . . .

"A state court enforcing a federal right is not simply another federal court. . . .

"The difficulties that inhere in the question of congressional power to control equitable remedies available in state courts strengthen our conviction that, whether or not Congress could deprive state courts of the power to give such remedies when enforcing collective bargaining agreements, it has not attempted to do so either in the Norris-LaGuardia Act or section 301.

"The Norris-LaGuardia Act is in terms drawn as a limitation on the courts of the United States. . . . The statute aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts. . . . *It did not limit the remedial power of the state courts . . . and could not constitutionally have done so since its prohibition was not restricted to injunctions in labor disputes affecting interstate commerce or any other subject over which Congress has paramount power.* (Emphasis added).

"Section 301 of the Labor Management Relations Act does not embody any policy that requires a state court enforcing rights created by that section to withhold injunctive relief. The principal purpose of section 301 was to facilitate the enforcement of collective bargaining agreements by making unions suable as entities in the federal courts, and there-

by to remedy the one-sided character of existing labor legislation. *We would give altogether too ironic a twist to this purpose if we held that the actual effect of the legislation was to abolish in state court equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of section 301* (emphasis added).

"Nothing in the nature of the rights created by section 301 requires that injunctive relief be denied in their enforcement. . . .

"Finally, there is no invariable requirement, implicit in the federal system, that a state court enforcing a federal right must not go beyond the remedies available in a federal court. Uniformity in the determination of the substantive federal right itself is no doubt a necessity, but such uniformity is not threatened because a state court can give a more complete and effective remedy."

Justice Traynor's well-reasoned opinion was clearly ignored by the Ninth Circuit; yet the *McCarroll* case logically should be adopted by this court.

Conclusion.

In enacting Section 301, Congress has done nothing to interfere with a state's traditional equity power to enjoin a breach of collective bargaining agreement. If the suite is transferred to a federal district court, the latter is not called upon to take any action in excess of its authority. To the contrary, all it has to do is merely decline to interfere with the already existing state in-

junction. This is in keeping with federal-state concurrent jurisdiction, as discussed above. This absence of judicial action does not in any way conflict with the prohibitions of the Norris-LaGuardia Act. Finally, the resultant enforcing of the terms of the collective bargaining agreement is exactly the purpose that Congress had in mind when it enacted Section 301. The decision of the Court of Appeals for the Ninth Circuit erroneously failed to recognize or adopt these precepts.

Respectfully submitted,

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